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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Streamlining the Commission's Antenna
Structure Clearance Procedure

and

Revision of Part 17 of the Commission's
Rules Concerning Construction, Marking,
and Lighting of Antenna Structures

) DOCKET FILE COPY ORIGINAL

) WT Dkt No. 95-5

COMMENTS OF ALLTEL MOBILE COMMUNICATIONS, INC.

ALLTEL Mobile Communications, Inc.¹ ("ALLTEL Mobile") hereby submits its comments in the above-captioned rule making matter² respecting the Commission's proposed tower registration process and its rules governing antenna lighting and marking requirements. In support thereof, the following is respectfully set forth.

ALLTEL applauds the Commission's efforts to implement a unified antenna clearance process through tower registration and the creation of a new data base. ALLTEL also applauds the Commission's implementation of revised Sections 303(q) and 503(b)(5) of the Communications Act to make tower owners responsible, at the risk of forfeiture, for non-compliance with the Part 17 painting and lighting requirements or other rules. (NPRM at paras. 20-22). While generally supportive of the Commission's

¹ ALLTEL Mobile, through various subsidiaries and affiliates, is a leading provider of cellular and other mobile communications services.

² In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structure, WT Docket No. 95-5, FCC 95-16 (Released January 20, 1995) ("NPRM")

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efforts, ALLTEL has the limited concerns as well as the suggestions detailed below respecting the Commission's proposal.

As noted by the Commission, Sections 303(q) and 503(b)(5) of the Communications Act were amended to: 1) make antenna structure owners, as well as Commission licensees and permittees responsible for the painting and lighting of antenna structures; and 2) provide that non-licensee antenna structure owners may be subject to forfeiture for violation of the Commission's tower painting and lighting requirements after having received notification of their specific painting and lighting obligations (NPRM at para 2; fn. 5).

The Commission now proposes to hold the tower owner primarily responsible for compliance with the Part 17 lighting and painting obligations, but would also hold licensees and permittees secondarily liable where reliance on the tower owner proved ineffective (NPRM at para 21).

ALLTEL generally believes that tower owners should be held solely responsible for maintaining their towers in accordance with the Commission's rules. The Commission's proposal to hold licensees secondarily liable offers tenant licensees little relief if a tower owner may evade its obligation through inaction, safe in the knowledge that a responsible tenant will maintain the tower rather than risk exposure to a forfeiture. The Commission now has the statutory authority to pursue the owner; ALLTEL asserts that there is little to be gained by extending the potential for liability to licensees as well.

The relationship between tower owner and tenant and the nature of their respective obligations vis-a-vis the tower is subject to enormous variation. In some instances, tenants are strictly prohibited from taking any action whatsoever respecting the operation and maintenance of the tower. ALLTEL acknowledges that the Commission should not be in the business of dictating the terms and conditions of tower leases. The Commission, however, must take into account situations where the tenant is legally prohibited from taking remedial action even where the owner fails to rectify a tower violation.

ALLTEL suggests that the Commission take an approach under which it would remove the threat of forfeiture from a licensee-tenant without relieving them of the underlying obligation to ensure that the tower is properly maintained. Licensee-tenants should be under the obligation to visually inspect the tower and notify the owner where deficiencies are found. Tenants should have the obligation to exercise every legal remedy at their disposal to ensure that the owner lives up to its lighting and painting obligations. The tenant, however, should not be required to pay forfeitures based upon an owner's inaction or disregard for the Commission's rules.

At para 11 of the NPRM, the Commission seeks comment on the three alternatives for accepting and processing antenna registrations. Of the three methods suggested by the Commission, ALLTEL believes it would be most efficient to process antenna registrations by geographic region. ALLTEL concurs with the

Commission's proposal to set filing windows by region and permit simultaneous registration of commonly owned antenna structures in cases where it would unify the registration filings of a particular owner or group of owners.

ALLTEL also concurs with the Commission's proposal to require revised FCC Form 854 to be filed by the tower owner prior to modification of antenna structures. Quarterly printed updates of the FCC's tower data base should be available to all licensees and the public at a reasonable price, which should be calculated to meet the cost of the registration program, thereby obviating the need to charge tower registration fees. Tower owners should be under a continuing obligation to notify the Commission and modify the registration where tower modifications have been made. Imposing continuing accuracy obligations on owners should obviate the need for a renewal process.

Given the implications for delay in the initiation of service to subscribers, ALLTEL strenuously disagrees with the Commission's proposal to require both an FAA determination and tower registration with the FCC prior to construction. See proposed rule sections 22.143(d)(4), 22.163(c) and 22.165(b) at Appendix B. In cases where no notification or notification on FCC Form 489 is required, applicants should be permitted to initiate construction of tower facilities immediately after obtaining FAA approval. Inasmuch as the safety of air navigation is the primary focus of the tower approval process, the Commission should permit the tower registration to be filed concurrently with the FCC notification, or


as soon after facility activation as is practicable.

ALLTEL believes that a letter notification to the tower owner would be sufficient for purposes of Section 503(b) of the Act and Section 1.80 of the rules to put the tower owner on notice of their lighting and painting obligations.

In conclusion, ALLTEL believes the Commission's efforts to consolidate its antenna data bases will lead to far more efficient application processing and related public interest benefits. The Commission is to be commended for its ongoing efforts to update and revise its rules.

Dated: March 21, 1995

Respectfully submitted,
ALLTEL Mobile Communications, Inc.

By: 
Glenn S. Rabin
Federal Regulatory Counsel